

Service Date: August 28, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF U S WEST	)	UTILITY DIVISION
COMMUNICATIONS, INC., 1997 Annual	)	
Report	)	DOCKET NO. N98.6.148
	)	ORDER NO. 6080a

PROTECTIVE ORDER

On June 30, 1998, U S West Communications, Inc. (USW), filed before the Public Service Commission (PSC or Commission) a Motion for Protective Order to govern certain information expected to be filed in or with USW's 1997 Annual Report. USW specifically requests protection of information required by USW Annual Report Schedules 23 (access line statistics), 24f (switch line capacity), and 27 (compensation of top 10 Montana based employees). On July 10, 1998, the PSC issued Order No. 6080 in the above-entitled matter, protecting the information in USW Annual Report Schedules 23 and 24f. At that time the PSC also determined that it was not clear whether the information required by Schedule 27 (employee compensation) is trade secret or private or within any other category that would justify protection from public disclosure and scheduled oral argument on the matter. Oral argument has been held and the PSC now determines that the information required by Schedule 27 is private and should be protected. The PSC hereby grants USW's request pertaining to Schedule 27 and hereby orders that proprietary information submitted in accordance with this Order be treated as confidential under the terms of this Order. It is further ordered that the following Protective Order provisions shall be in effect, as qualified by the paragraph on Special Conditions:

Special Conditions The provisions which follow this paragraph are routine PSC Protective Order provisions, designed to govern the use and protection of confidential information in proceedings before the PSC (e.g., contested cases). There presently is no proceeding pending before the PSC in which the use and protection of the information in issue is known to be pertinent. Therefore, access to the confidential information is limited to members

of the PSC, its staff, the Montana Consumer Counsel, and its staff, and they shall be bound by the terms of this Protective Order. Access to the confidential information by any other person with standing, including an attorney representing that person, will be available only upon order of the PSC following a motion filed with the PSC and served on USW. USW shall have 14 days from the date of service of such motion to respond to the motion. Hearing or oral argument may be requested on the motion. Any person granted access to the information pursuant to order of the PSC shall be bound by the terms of this Protective Order. The above procedural requirement does not prevent any person from challenging the confidentiality of the information in accordance with the following provisions pertaining to such challenge (e.g., paragraph 2, below). Any challenge must be made by motion filed with the PSC and served on USW. USW shall have 14 days from the date of service of such motion to respond to the motion. Hearing or oral argument may be requested on the motion.

1. (a) Confidential Information. All documents, data, information, studies and other materials furnished pursuant to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, or pursuant to Commission order, that are claimed to be of a trade secret, privileged, or confidential nature shall be furnished pursuant to the terms of this Order, and shall be treated by all persons accorded access thereto pursuant to this Order as constituting trade secret, confidential, or privileged commercial and financial information (hereinafter referred to as "Confidential Information"), and shall neither be used nor disclosed except for the purpose of this proceeding, and solely in accordance with this Order. All material claimed to be Confidential Information shall be submitted on yellow paper and so marked by the party or affiliate by stamping the same with a designation indicating its trade secret, proprietary, or confidential nature.

(b) Use of Confidential Information and Persons Entitled to Review. All Confidential Information made available pursuant to this Order shall be given solely to counsel for the parties, and shall not be used or disclosed except for purposes of this proceeding; provided, however, that access to any specific Confidential Information may be authorized by said counsel, solely for the purpose of this proceeding, to those persons indicated by the parties as being their experts in this matter. Any such expert may not be an officer, director or employee (except legal counsel) of the parties, or an officer, director, employee or stockholder or member of an

association or corporation of which any party is a member, subsidiary, or affiliate. Any member of the Commission, and any member of its staff, the Montana Consumer Counsel, and any member of its staff may have access to any Confidential Information made available pursuant to this Order, and shall be bound by the terms of this Order.

(c) Nondisclosure Agreement. Prior to giving access to Confidential Information as contemplated in paragraph 1(b) above to any expert, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to such person, and prior to disclosure such person shall agree in writing to comply with and be bound by this Order. In connection therewith, Confidential Information shall not be disclosed to any person who has not signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A." Court reporters shall also sign an Exhibit "A." The nondisclosure agreement (Exhibit "A") shall require all persons to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and consent to be bound by its terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party and to the Commission.

(d) Delivery of Documentation. Where feasible, Confidential Information will be marked as such and delivered to counsel. In the alternative, the Confidential Information may be made available for inspection and be reviewed by counsel and experts as defined in paragraph 1(a)-(c) herein in a place and a time mutually agreed on by the parties, or as directed by the Commission.

## 2. Challenge to Confidentiality.

(a) This Order establishes a procedure for the expeditious handling of information that a party claims is confidential; it shall not be construed as an agreement or ruling on the confidentiality of any such document.

(b) In the event that the parties hereto are unable to agree that certain documents, data, information, studies or other matters constitute trade secret, confidential, or privileged commercial and financial information, the party objecting to the trade secret claim shall forthwith submit the said matters to the Commission for its review pursuant to this Order. When the Commission rules on the question of whether any documents, data, information, studies, or

other matters submitted to it for review and determination are, or are not, Confidential Information, the Commission will enter an order resolving the issue.

(c) Any party at any time upon ten (10) days prior notice may seek by appropriate pleading to have documents that have been designated as Confidential Information or which were accepted into the sealed record in accordance with this Order removed from the protective requirements of this Order or from the sealed record and placed in the public record. If the confidential or proprietary nature of this information is challenged, resolution of the issue shall be made by a hearing examiner or the Commission after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential matter shall be present. The record of such in camera hearings shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. N98.6.148." It shall be transcribed only upon agreement by the parties or Order of the Hearing Examiner or the Commission, and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order, unless and until released from the restrictions of this Order either through agreement of the parties, or after notice to the parties and hearing, pursuant to an Order of the Hearing Examiner or the Commission. In the event that the Hearing Examiner or the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this Order or from the protection of the sealed record, the parties, at the request of the providing party and to enable the providing party to seek a stay or other relief, shall not disclose such information or use it in the public record for five (5) business days.

3. Seal. While in the custody of the Commission, materials subject to this Order shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. N98.6.148," and due to their trade secret nature they shall not be considered as records in the possession or retained by the Commission within the meaning of the open meetings or public records statutes.

4. Use in Pleadings, Briefs, etc. Where reference to Confidential Information in the sealed record is required in pleadings, briefs, argument or motions, it shall be by citation of title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Confidential Information shall be placed in a separate section of the

pleading or brief and submitted to the Commission under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed an Exhibit "A." All protection afforded in this Order apply to materials prepared and distributed under this paragraph.

5. (a) Use in Decisions and Orders. The Hearing Examiner or the Commission will attempt to refer to Confidential Information in only a general or summary form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in this proceeding to discuss Confidential Information other than in a general or summary form, it shall be placed in a separate section of the Order or decision under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit "A."

(b) Summary of Proprietary Information. In all instances when material is filed with the Commission pursuant to this Order which is considered to be Confidential Information, the provider shall concurrently file a brief non-proprietary written summary of the Confidential Information. In other instances, if deemed necessary by the Commission, the provider shall prepare a written summary of the Confidential Information referred to in a Commission decision or Order, for placement in the public record.

6. Segregation of Files. All Confidential Information filed with the Commission will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties or, after notice to the parties and hearing, pursuant to the Order of the Commission or final order of a Court having jurisdiction. All written Confidential Information coming into the possession of the Montana Consumer Counsel under this Order may be retained by it in its office files, but shall be withheld from inspection by others, except for its staff and experts, unless released by the Commission or a final order of a court under this paragraph and subject always to the terms of paragraph 7 of this Order.

7. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of this proceeding, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure and in accordance with the purposes and intent of this Order.

8. Reservation of Rights. The parties hereto affected by the terms of this Protective Order further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Order in response to interrogatories, requests for information or cross-examination on the grounds of relevancy or materiality.

This Order shall in no way constitute any waiver of the rights of any party herein to contest any assertion or finding of trade secret, confidentiality or privilege, and to appeal any such determination of the Commission or such assertion by a party.

Done and dated this 4th day of August, 1998, by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chair

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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DANNY OBERG, Commissioner

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BOB ROWE, Commissioner  
(voting to dissent, written dissent attached)

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

EXHIBIT "A"

I have reviewed the foregoing Protective Order in U S West Communications, Inc. Docket No. N98.6.148, dated August 28, 1998 and agree to be bound by the terms and conditions of such order.

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Signature

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Typed or Printed Name

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Employer or Firm

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Business Address

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Party

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Date



DISSENT OF COMMISSIONER ROWE

The protective order as requested by U S WEST and granted by the Commission is overbroad. It would have been possible to grant protection to information which is legitimately subject to protection, whether as trade secrets or on the basis of individual privacy, while not extending protection to information which is not properly granted protective status. Further, there has to-date been an inadequate showing that some of the information constitutes "trade secrets" which should be protected.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of August, 1998.

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BOB ROWE  
Commissioner